U.S. DEPARTMENT OF LABOR
Employment and Training Administration
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DIRECTIVE: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 4-83

TO : ALL STATE EMPLOYMENT SECURITY AGENCIES

FROM : ROYAL S. DELLINGER
Acting Administrator
for Regional Management

SUBJECT : Amendments Made by P.L. 97-248 (Tax Equity and Fiscal Responsibility Act of 1982), Which Affect the Federal-State Unemployment Compensation Program

1. Purpose. To advise State agencies of the amendments made by the subject act to the Federal-State Extended Unemployment Compensation Act of 1970 (EUCA); Titles IX and XII of the Social Security Act; Sections 3301, 3302, 3304(a)(6)(A), 3306(b) and 3306(c)(1), (10) and (20) and 3306(q) of the Federal Unemployment Tax Act (FUTA); and Section 85(b), 3508 and 6157 of the Internal Revenue Code of 1954; and added provisions in Sections 194, 271(b)(3) and 611 of P.L. 97-248, and the Federal Supplemental Compensation Program added in Title VI-A of the Act.

2. References. Sections 191 through 194, 269, 271 through 277, 601 through 606 and 611 of P.L. 97-248; UIPL No. 13-82.

3. Background. The amendments in P.L. 97-248 made several significant changes affecting the Federal-State unemployment compensation program, most of which will encourage or require changes in State laws. Sections 191 through 194 of P.L. 97-248, respectively, provide for:

(a) rounding of unemployment benefit amounts to the next lowest dollar;

(b) extension of authorization of use of Reed Act credits from 25 to 35 years from date such monies were first credited to the State accounts, and restoration to State accounts of amounts of Reed Act monies used for payment of benefits;

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(c) requiring denial of benefits between school terms to individuals employed as nonprofessionals in institutions of higher education and provision for retroactive payment of compensation to non-professionals in educational institutions if such individuals were not offered an opportunity to perform such services following the period between successive academic years or terms; and

(d) encouraging States to enact short-time compensation programs (also known as "shared work" or "work sharing") and providing guidelines for development of model legislative language for such programs.

Section 269 and 271 through 277 of P.L. 97-248, respectively, provide for:

(a) exemption of licensed real estate agents and direct sellers from FUTA coverage;

(b)(1) increasing the Federal unemployment tax wage base from $6000 to $7000;

(2) increasing the gross Federal tax on January 1, 1983 from 3.4 to 3.5 percent, and a further increase from 3.5 to 6.2 (or 6.0) percent beginning January 1, 1985;

(3) modifying the allocation of FUTA revenues so that 60 percent will be allocated to the Employment Security Administration Account and 40 percent will be allocated to the Extended Unemployment Compensation Account;

(4) increasing the additional credit allowed under Section 3302(b) FUTA from 2.7 to 5.4 percent effective January 1, 1985;

(5) changing the annual reduction in the offset credit against the gross Federal unemployment tax rate that is applicable if a State does not repay a loan by decreasing the reduction from 10 percent to 5 percent;

(6) changing the specified reduction of tax credits that is applicable to employers in a State if the Secretary of Labor determines that a State has not entered into an agreement under the Trade Act of 1974 or has not fulfilled its

commitment under the agreement. The reduction that is applicable in these circumstances is decreased from 15 to 7 1/2 percent of the tax imposed on employers;

(7) technical amendments changing various provisions to reflect the changes made to the gross Federal tax;

(8) a 5-year transitional provision applicable to States that allow certain specified industries to pay a non-experience rated State tax rate that is below 5.4 percent. Such States would be allowed to increase the tax rate each year for such industries to no less than 20 percent of the difference between the current rate they paid and 5.4 percent. The transitional provision is effective January 1, 1985;

(c) allowing States to make Federal unemployment loan repayments from State trust fund accounts in lieu of further reductions in the credit against the gross Federal unemployment tax rate, provided several requirements are met.

(d) dropping the additional credit reduction based on the State's previous 5-year benefit cost rate that begins in the fifth year a State is subject to annual reductions in the credit against the gross Federal tax because of outstanding Title XII loans. The tax reduction is dropped only if the Secretary of Labor determines that the State has taken no action during the 12-month period ending on September 30 which has reduced the solvency of the State unemployment trust fund.

(e) allowing States with high unemployment to reduce payment of interest on Federal unemployment loans when due to 25 percent of the amount due in any year, and thereby extend the payment of the total interest obligation over a 4-year period. (Interest would be charged on any deferred amount). The deferral is permitted in any calendar year in which the State insured unemployment rate equaled or exceeded 7.5 percent during the first 6 months of the preceding calendar year.

(f) changing the conditions under which repayable advances to the Extended Unemployment Compensation

Account must be repaid from that account to general funds;

(g) elimination of the under age (22) requirement for the exclusion from coverage under FUTA of services performed by students in a full time work-study program that is an integral part of the student's academic program. After September 3, 1982, the exemption is applicable regardless of age.

(h) excluding from coverage under FUTA of services of a full time student who was paid wages for less than 13 calendar weeks in calendar year 1983 in the employ of an organized camp (exclusion is applicable only for calendar year 1983); and

(i) extending for two years, until January 1, 1984, the FUTA exemption from coverage of farmworkers who are aliens temporarily admitted to the United States to work agricultural crops.

In addition to the above amendments, P.L. 97-248 also included provisions for a Federal Supplemental Compensation program, making from 6 to 10 weeks of additional Federally financed benefits payable in all States through March 31, 1983. These provisions are contained in Sections 601 through 606 of P.L. 97-248. Also, Section 611 of P.L. 97-248 lowered the threshold for inclusion of unemployment compensation in adjusted gross income to $12,000 from $20,000 for single taxpayers and to $18,000 from $25,000 for joint family returns. Both of these matters will be fully dealt with in separate program letters.

Draft language for a model "short time compensation program" and commentary thereon will be provided to the States at a later date in a separate letter.

Explanations and interpretations of each of the amendments in Sections 191-193, 269, and 271-277 are discussed in Attachment II to this UIPL on a section by section basis corresponding to the section numbers in P.L. 97-248. The suggested draft language for changes in State laws where necessary to implement these changes is provided in Attachment III.

4. Action Required. SESAs are requested to take the necessary action to assure consistency with Federal requirements as amended by P.L. 97-248. The effective dates for implementation of these requirements are set forth under each section in Attachment II.

5. Inquiries. Inquiries should be directed to your regional office.

6. Attachments: I. - Table of Contents for Commentary and Draft Language to Implement P.L. 97-248

II. - Explanation and Interpretation of Amendments

III. - Draft Language

Table of Contents for Commentary and Draft Language to Implement P.L. 97-248

Section by Section Explanation and Interpretion of Amendments in P.L. 97-248 Which Affect the Federal-State Unemployment Compensation Program

1. Section 191 - Rounding of Unemployment Benefit Amounts to the Next Lower Dollar

Section 191 of P.L. 97-248 amended Section 204(a)(2) of the Federal-State Extended Unemployment Compensation Act of 1970 to change the basis on which States will be reimbursed for extended benefits paid to claimants. Prior to this amendment the State was entitled to reimbursement with respect to all sharable regular and sharable extended compensation except when State law provided for a compensable waiting week; in such a case the first week of extended benefits paid to any claimant would not be reimbursed. This amendment sets forth an additional condition on the State entitlement to reimbursement, effective October 1, 1983. This amendment has no effect whatsoever on the rights of claimants to extended benefits as is required by the Act.

As amended, Section 204(a)(2) of the Act provides:

* * * *

"(2) No payment shall be made to any State under this subsection in respect to compensation (A) for which the State is entitled to reimbursement under the provisions of any Federal law other than this Act, (B) paid for the first week in an individual's eligibility period for which extended compensation or sharable regular compensation is paid, if the State law of such State provides for the payment (at any time or under any circumstances) of regular compensation to an individual for his first week of otherwise compensable unemployment, or (C) paid for any week with respect to which such benefits are not payable by reason of section 233(d) of the Trade Act of 1974, or (D) paid to an individual with respect to a week of unemployment to the extent that such amount exceeds the amount of such compensation which would be paid to such individual if such State had a benefit structure which provided that the amount of compensation otherwise payable to any individual for any week shall be rounded (if not a full dollar amount) to the nearest lower full dollar amount." (New language underlined)

Under this amendment if the State does not provide for a benefit formula under which benefits are rounded down to the next lower multiple of one dollar, the State will not be entitled to the Federal 50 percent matching share on the amount by which the benefits exceed the lower dollar amount. The United States Senate, Committee on Finance Report on HR 4961, July 12, 1982, P.59, states:

> "The committee agreed to an amendment under which the Federal 50 percent matching share of extended unemployment benefits would not be available on that part of extended unemployment benefit payments which result from a failure on part of the State to have a benefit structure in which benefits are rounded down to the next lower dollar."

Therefore, and for example purposes only, if under State unemployment benefit computations an individual's weekly benefit amount is $151.32, and State law provides that this amount be rounded up to the next full dollar amount, which, in our example, is $152.00, then, the State would bear 100 percent of the extended benefit costs for the last whole dollar amount of each benefit payment to the claimant. If the State also rounds up partial benefits after previously rounding up the weekly benefit amount, it would bear 100 percent of the last two dollars of each such benefit payment since it will have rounded the individual's benefits twice. In other words, if the claimant, in our example, were to be paid 13 weeks of extended benefits, the State would not be reimbursed for the Federal 50 percent matching share of $13.00, which is $6.50, and this would be $1.00 higher for each partial week if the State rounds up partial payments. In order for a State to be entitled to reimbursement of the Federal 50 percent matching share, in this example, the weekly benefit amount would have to have been rounded down to $151.00, and partial payments that were not an even dollar amount would have to be rounded down to the next lowest full dollar amount.

The requirement to round down to the "nearest lower full dollar amount" for Federal reimbursement of sharable regular and sharable extended compensation applies to the following elements in the "benefit structure."

- Amounts of regular weekly benefit payments;
- Amounts of extended weekly benefit payments;
- The State maximum or minimum weekly benefit amount;
- Partial and part-total benefit payments;
- Amounts payable after deduction for pensions;
- Amounts payable after any other deduction required by State law.

For purposes of this section, the elements listed above are referred to as "benefit structure." The term "benefit structure," does not apply to the base period qualifying requirements. We recommend that the State law be thoroughly reviewed to determine what provisions need changing to provide for the rounding of unemployment benefit amounts to the next lower dollar.

In summary, if the effect of any State law provision permits the raising to the next full dollar of a fractional weekly benefit amount, there would be no reimbursement of the Federal share of extended benefits for that dollar amount raised and paid to the claimant. Such a State would bear 100 percent of the benefit costs for the whole dollar amount raised. The rounding provision is not a conformity requirement for the receipt of administrative grants or the allowance of tax offset credit.

Effective Date of Provision in Section 191

Section 191(b)(1) provides that the amendment made by Section 191 "shall apply in the case of compensation paid to individuals during eligibility periods beginning on or after October 1, 1983." Thus the amendment applies only with regard to those individuals whose eligibility periods for extended benefits begin on or after that date. Under Section 203(c) of the Federal-State Extended Unemployment Compensation Act of 1970, an individual's eligibility period is defined as "the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such extended benefit period."

If a State's law does not provide for "rounding down" of compensation paid to individuals during eligibility periods

beginning on or after October 1, 1983, it would be subject to a loss of Federal reimbursement in the following manner:

1. If a State law provides for the "rounding up" of compensation paid on October 1, 1983 and it is in an extended benefit period on that date, the loss of Federal reimbursement would apply only to benefits paid to those individuals who establish benefit years on or after October 1, 1983.

2. If, on the other hand, a State law provides for the "rounding up" of compensation paid on October 1, 1983, but it is not in an extended benefit period on that date, the future loss of Federal reimbursement would begin whenever the State begins the next extended benefit period. As of the beginning date of that extended benefit period the loss of Federal reimbursement would occur on the full dollar amount raised for all extended benefits and sharable regular benefits paid in that extended benefit period irrespective of when individual benefit years are established.

Accordingly, a State law that currently provides for "rounding down" of compensation paid will not need to amend its law. If a State law provides for "rounding up" under any conditions, it must amend its law on or before October 1, 1983, in accordance with new Section 204(a)(2)(D), EUCA, or be subject to a loss of the Federal 50 percent matching share on the full dollar amounts to which benefits are raised.

Additional Time Allowed to Amend State Law to "Round Down" Unemployment Benefit Amounts.

However, there is an exception to the October 1, 1983 effective date. States are provided with additional time after the October 1, 1983, effective date to eliminate provisions in their State laws for "rounding up" of unemployment compensation amounts where the Secretary of Labor determines that legislation is required to eliminate such provisions. Specifically, Section 191(b)(2) of P.L. 97-248 provides that:

> "(2) In the case of a State with respect to which the Secretary of Labor has determined that State legislation is required in order to provide for rounding down of unemployment compensation

> amounts, the amendment made by this section shall apply in the case of compensation paid to individuals during eligibility periods which begin on or after October 1, 1983, and after the end of the first session of the State legislature which begins after the date of the enactment of this Act, or which began prior to the date of the enactment of this Act and remained in session for at least twenty-five calendar days after such date of enactment. For purposes of the preceding sentence, the term "session" means a regular, special, budget, or other session of a State legislature."

Pursuant to paragraph (2), when the Secretary of Labor determines, after appropriate inquiry of the State involved, that legislation is needed to eliminate the State's policy of "rounding up" of unemployment benefit amounts on and after October 1, 1983, the State may be given additional time beyond the October 1, 1983, effective date in which to amend its law for this purpose. The agency will have until the end of the first session of the State legislature, which begins after September 3, 1982 (the date of enactment of P.L. 97-248), or October 1, 1983, whichever is later. If the State legislature is in session on September 3, 1982, and remains in session thereafter for at least 25 calendar days, the October 1, 1983 date is applicable to that State. The "session" to which paragraph (2) applies is specifically defined to include a regular, special, budget, or other session of a State legislature and is applicable regardless of the length of the "session." For example, if the State legislature first meets in session on January 8, 1983, and adjourns on December 18, 1983, the amendment in Section 191 of P.L. 97-248 would be effective with respect to that State on December 19, 1983. If the session ended before October 1, 1983, the required effective date for the rounding down provision would be October 1, 1983 rather than the earlier ending date that the legislature adjourned.

If the State fails to amend its law as set forth above, then the amendment to Section 204(a)(2)(D) will take effect in that State on December 19, 1983, (in the above example) (or October 1, 1983 where the legislature adjourned before that date) with respect to individuals whose eligibility period begin on or after that date.

Eligibility period has the same meaning and application in the case of a State given a grace period as was described above for the October 1, 1983, effective date.

Because of the different periods that State legislatures are in session, the effective dates for the amendment to paragraph (2) for States given the "grace period" provided therein, will vary depending on the beginning and ending dates of such sessions. States will be asked to confirm the status of "rounding" provisions in their laws, and to state whether legislative amendments are needed. If the State provides notification that legislative action is needed, this will form the basis for a determination by the Secretary allowing a "grace period" as provided under paragraph (2).

Extension of Authorization of Use of "Reed Act" Money Credits--Section 192(a)

2. Section 192 - Authorization of Use of "Reed Act" Money

Section 192(a) of P.L. 97-248, extended from 25 to 35 years the period during which a State may appropriate and obligate for administrative purposes "Reed Act" funds credited to its account under Section 903 of the Social Security Act. The change in the time limit made by P.L. 97-248 has a retroactive effect; such monies may continue to be appropriated and obligated for administrative purposes until the expiration of 35 (rather than 25) years starting from the date such monies were first credited to the State accounts. In other words, if "Reed Act" monies which were first credited on July 1, 1956, 1957 and 1958--the only dates on which Reed Act have thus far been credited to the States' accounts--have not yet been appropriated and obligated or expended, they may be appropriated and obligated for administrative purposes prior to the termination of the 35-year authorization period. The actual expiration date for use of the monies credited on the above indicated dates will depend on the fiscal year used by the State. (See Fiscal Letter No. 4-82 issued February 27, 1982). Thereafter, such monies may be available only for benefit payments.

Depending on the particular fiscal year used by a State, the following time limits will apply in those States which still have Reed Act funds avaliable:

1. With respect to Reed Act funds credited in 1956 monies may be appropriated and obligated for administrative purposes prior to:

   a) December 31, 1990, if the State has as a January 1 to December 31 fiscal year.

   b) September 30, 1990, if the state has an October 1 to September 30 fiscal year.

   c) June 30, 1991, if the State has a July 1 to June 30 fiscal year.

2. With respect to Reed Act funds credited in 1957, monies may be appropriated and obligated for administrative purposes prior to:

   a) December 31, 1991, if the State has a January 1 to December 31 fiscal year.

b) September 30, 1991, if the State has an October 1 to September 30 fiscal year.

c) June 30, 1992, if the State has a July 1 to June 30 fiscal year.

For the expiration date of Reed Act funds credited in 1958, add one year to the underlined dates in 2. above.

Funds granted for amortization, which are deposited in the State unemployment fund to reimburse Reed Act funds used for the purchase or construction of buildings, must be credited to the earliest Reed Act funds used in the building project which have not been reimbursed and may again be appropriated within the 35-year limitation for other administrative purposes if (1) such funds are appropriated by the State legislature, and (2) the appropriation measure meets the requirements of Section 903(c)(2) of the Social Security Act.

There has been no change in the requirement in section 903(c)(2)(B) of the Social Security Act that the appropriation law limit the obligation of funds to the 2-year period which began on the date of enactment of the State appropriation law. Thus, the authority to obligate Reed Act funds expires at the end of the 2-year period commencing with the date of enactment of the State appropriation law or at the end of the 35-year period commencing with the date on which the funds were first credited to the State's account, whichever is the earlier.

A State which desires to take advantage of the extension of the time limit made by P.L. 97-248 should amend the provision in its law authorizing the use of Reed Act money which may still be available. Otherwise, if the law retains the previous 25-year limitation (or, as in some cases the earlier 15, 10 or 5-year limitation), the law will conflict with any appropriation act which correctly refers to the limit on the obligation of funds as 35 years following the date on which such funds were credited.

In the past we have found that some States enacting Reed Act appropriation bills have not included all of the provisions to assure that the bill conforms with the requirements contained in section 903(c)(2) of the Social Security Act. In doing so, they have unnecessarily raised issues as to the consistency of such bills with those requirements. To help prevent such issues from arising in the future, we are including a draft appropriation bill in Attachment III which includes all of the provisions necessary to satisfy the requirements of Section 903(c)(2) of the Social Security Act. We strongly urge that States make use of the draft appropriation bill that is provided in the Attachment.

Restoration of Amounts of Reed Act Monies Used for Payment of Benefits--Section 192(b)

Under a new provision added to section 903(c) of the Social Security Act by section 192(b) of P.L. 97-248, a State may, upon request made by the Governor, have Reed Act monies that were used for payment of benefits restored to the status of Reed Act funds, provided that certain requirements are met. Prior to the enactment of this provision, any such monies used for benefits could not be so restored.

As indicated previously, Reed Act funds transferred to a State's account in the Unemployment Trust Fund pursuant to section 903(a) of the Social Security Act may be used only for the payment of unemployment compensation or for the payment of expenses incurred in the administration of the State's unemployment compensation law and the public employment offices, provided the money to be used for administration is appropriated by the State legislature and the appropriation meets the requirements of Section 903(c)(2). If no appropriation is enacted, the monies transferred remain available unless they have been used for the payment of benefits. Once they have been used for benefits such payments are lost and are no longer available for either purpose designated above. The loss can occur when the State records reflect that the money was used for payment of benefits or when the State receives and uses an advance under Title XII of

the Social Security Act.

This loss occurs when an advance is received, because Reed Act monies may not be set aside, reserved, earmarked or in any way omitted from availability for benefits prior to actual obligation for administrative expenses pursuant to an appropriation by the legislature. As a consequence, a State is deemed to have expended all sums available to it for the payment of compensation (including unobligated Reed Act money) prior to the use of any part of a Title XII advance. However, Reed Act monies expended for benefits may now be restored to State accounts and used for future benefits or administrative expenses.

Section 192(b) of P.L. 97-248, adds new paragraph (3) to section 903(c) of the Social Security Act to permit States that have used any amount of Reed Act funds to pay unemployment benefits to have amounts so used restored to the status of Reed Act funds by taking certain prescribed action.

Specifically, new section 903(c)(3) provides:

"(3)(A) if-

(i) amounts transferred to the account of a State pursuant to subsections (a) and (b) of this section were used in payment of unemployment benefits to individuals; and

(ii) the Governor of such State submits a request to the Secretary of Labor that such amounts be restored under this paragraph, then the amounts described in clause (i) shall be restored to the status of funds transferred under subsections (a) and (b) of this section which have not been used by eliminating any charge against amounts so transferred for the use of such amounts in the payment of unemployment benefits.

(B) Subparagraph (A) shall apply only to the extent that the amounts described in clause (i) of such subparagraph do not exceed the amount then in the State's account.

(C) Subparagraph (A) shall not apply if the State has a balance of advances made to its

account under Title XII of this Act.

(D) If the Secretary of Labor determines that the requirements of this paragraph are met with respect to any request the Secretary shall notify the Governor of the State that such requirements are met with respect to such request and the amount restored under this paragraph. Such restoration shall be as of the first day of the first month following the month in which the notification is made."

Under the requirements of subparagraph (A) as set forth above, the Governor of a State desiring to have such Reed Act monies restored must submit a specific request to the Secretary of Labor asking that the amounts used for payment of benefits be restored to the State's account for use as permitted by the provisions of section 903(c)(2) of the Social Security Act. The request must specify the amounts to be restored. In this regard, subparagraph (B) limits the amounts to be restored to those amounts that were actually used for the payment of benefits. Since the only amounts so transferred to the States were those credited to State accounts in 1956, 1957 and 1958, the outside limits will apply to the amounts so credited.

However, under the provisions of subparagraph (C), no State will be entitled to restoration of Reed Act monies pursuant to section 903(c)(3) if it has a balance of advances made to its account under Title XII of the Social Security Act at the time the Governor requests restoration. This limitation applies until such time as there is no longer an outstanding balance of such advances. Restoration is not automatic under section 903(c)(3). There will be no restoration of Reed Act funds if these requirements are not satisfied, or if there is no request submitted by the Governor for such restoration.

Effective Date for Restoration of Reed Act Monies

Under the provisions of subparagraph (D) the Secretary of Labor must determine that all of the above described

requirements are met before any request for restoration of Reed Act monies is approved. When that determination is made the Secretary will notify the Governor of the State whether the requirements are satisfied and, if so, the specific amounts that are restored. Actual restoration of such monies will be effective as of the first day of the month following the month in which the Secretary notifies the Governor of his determination regarding the request for restoration.

The provision allowing restoration of Reed Act funds became effective on September 3, 1982, the date of enactment.

Procedures for requesting restoration of funds pursuant to section 903(c)(3), SSA, and further explanations for determining the amounts that may be restored, will be provided in a separate directive.

3. Section 193--Treatment of Certain Employees in Educational Institutions Between Academic Years or Terms.

Prior to its amendment by P.L. 97-248, Section 3304(a)(6)(A)(ii) provided that benefits based on service in other than an instructional, research or principal administrative capacity for an educational institution that is not an institution of higher education

> "may be denied to any individual for any week which commences during a period between two successive academic years or terms if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms."

As amended by P.L. 97-248, Section 3304(a)(6)(A)(ii) provides

> "(ii) with respect to services in any other capacity for an educational institution to which section 3309(a)(1) applies-
>
> "(I) compensation payable on the basis of such services may be denied to any individual for any week which commences during a period between 2 successive academic years or terms if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms, except that
>
> "(II) if compensation is denied to any individual for any week under subclause (I) and such individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment

of the compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of subclause (I)."

The "nonprofessional" denial continues to be an optional provision which a State can either enact or not as it sees fit. However, as was the case with subparagraph (A)(ii) before amendment, if adopted, the provision must be accepted in toto and must be applied equally to the services of all categories of nonprofessionals whether employed in elementary and secondary schools or in institutions of higher education. Distinctions between categories of workers or the educational institutions in which employed continue to be inconsistent with Federal law requirements.

The above quoted amendments make the following two major changes to section 3304(a)(6)(A)(ii), FUTA.

(a) Application to Institutions of Higher Education

Before amendment, the denial was not applicable to services performed by nonprofessionals employed by institutions of higher education because of the parenthetical clause "(other than an institution of higher education)." The amendments deleted this parenthetical clause so that the denial is applicable to services performed by nonprofessionals employed by institutions of higher education as well as nonprofessionals employed by elementary and secondary schools.

(b) Retroactive Payments

The amendments added subclause II to Section 3304(a)(6)(A)(ii) which requires the payment of benefits retroactively when an individual was denied benefits solely by reason of the between terms denial provisions and the reasonable assurance for employment in the second academic year or term was not fulfilled. Specifically, retroactive payments are required when the "individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms," provided the individual filed a timely claim for compensation for each week that compensation was denied solely under the between terms denial provisions. As indicated in the above quoted language, retroactive payments will be required only

if the individual was not offered an "opportunity" to work in "the educational institution" for the forthcoming academic year or term. The word "opportunity" is not specifically defined in the statute, and in the absence of a definition we believe the term must be given its common, ordinary meaning. According to Webster's New International Dictionary, Second Edition, 1959, the term "opportunity" is defined to mean "fit or convenient times; a time or place favorable for executing a purpose; a suitable combination of conditions; suitable occasion; change." In the context of the phrase in which the word is used, we believe it must be construed as a chance to actually perform service in the academic year or term that follows the between terms period. This chance must be more than a token opportunity to perform services in a nonprofessional capacity. A valid basis for denying retroactive payments does not exist if the opportunity to work was not bona fide. Therefore, if it is established that an offer of employment was not bona fide then a valid basis would exist for allowing retroactive payments. When an offer of employment is given solely for purposes of avoiding retroactive payment, as may be indicated by a subsequent dismissal that follows shortly after the individual begins performance of the required service, such an offer would not constitute an "opportunity to perform services." We believe a contrary view which allowed an employer to circumvent the law by such a practice would clearly be contrary to the purpose and intent of this provision.

Since the offer of an opportunity to perform services will normally occur at the time that the educational institution resumes operations, the question as to whether such an opportunity was offered will depend on the facts established at that point in time. However, since it may become clear prior to that occasion that no offer of employment will be made to the individual, we believe it would be consistent with new subclause (II) for a State if it so desires, to allow retroactive payments prior to the resumption of such operations, but only if it is clearly established that such offer will not be made when operations begin. Action taken by an educational institution prior to the beginning of such operations which establishes that no offer of employment will be made must be unqualified and unequivocal in order to allow retroactive payments in accordance with

the specified requirement of subclause (II) that retroactive payment be made only where the individual "was not offered an opportunity to perform services." Otherwise if the State does allow retroactive payments under such circumstances and the individual nevertheless is given a job in the second academic year or term, it would be necessary to recover the retroactive payments.

An individual is not entitled to retroactive benefits when the "offer" of the opportunity is prevented by the individual's action. For example, the individual has a reasonable assurance of returning to work as a secretary. She decides that she does not want to work as a secretary. Another position is not available for her. Since the "opportunity" to work was unfulfilled because of the individual's action, not the employer's, any claim for retroactive benefits should be denied.

Whether or not an "opportunity was offered" is to be decided on the facts in each case. As indicated previously, an individual is not to be denied retroactive benefits when the opportunity offered was not bona fide or when the opportunity was offered under such conditions as to make its acceptance unreasonable. The conditions under which the opportunity was offered the individual should be compared to the conditions under which the opportunity was offered to other individuals similarly situated who returned to work.

The question of whether an opportunity was offered would be involved in the following case. A secretary is denied benefits based on her school wages because she has a reasonable assurance of reemployment. School begins on September 7, 1982. She makes reasonable efforts to secure her assignment as a secretary but is not successful. She is entitled to retroactive benefits, if otherwise eligible, because she has not been offered an opportunity to perform <u>any</u> service in a nonprofessional capacity.

<u>Timely Claims for Retroactive Benefits</u>

Under subclause (II) retroactive benefits are payable only "for each week for which the individual filed a timely claim for compensation." Accordingly, in order to be entitled to retroactive payments if an opportunity

to perform services is not offered, the individual is required to file a timely claim for each week of the denial period in the same manner and under the same conditions for timely filing as are applicable to an ordinary claim for a week of unemployment. A State may not establish timeliness for purposes of these claims that is different from those provided for an ordinary claim. These claims when filed during such denial period will not be paid because of the between terms denial. They will be available for payment in the event the individual qualifies for retroactive benefits. This requirement may be viewed as comparable to the situation when a claimant is disqualified for a separation issue, for example, and files an appeal. The claimant continues to file weekly claims for benefits pending the decision on the appeal to assure entitlement to benefits during the period pending a decision.

The notice of the between terms denial should include a statement informing the claimant that if an opportunity to perform services is not offered in the second academic year or term, the individual may be entitled to retroactive benefits but only if a claim is filed for each week that he or she is denied benefits solely by reason of the between terms denial provisions. Such notice is necessary to enable the individual to protect the potential right to retroactive benefits in such circumstances.

All of the eligibility requirements apply to such weekly claims. If, for example, an individual is not available for work or has not sought work during a particular week in the between terms denial period, benefits for that week would not be payable in the event that the individual later became entitled to retroactive benefits. A notice of determination, together with notice of the right to appeal, must be issued for each week a claim is filed in the between terms denial period.

The "timeliness" of the claim for retroactive payments itself should be computed from the date it became clear that an opportunity to perform services was not going to be offered or if offered, the date the offer was terminated. In the case of a written withdrawal of the opportunity to perform services it would be the date of receipt of the letter or other notification. In other cases, the date would be that established by the facts in the case.

An individual should be allowed a reasonable time within which to file a claim for retroactive benefits. Accordingly, we recommend that State regulations, practices

and/or procedures allow an individual a minimum of two calendar weeks following the beginning of the academic year or term.

Effective Dates

Section 193(b) provides that amended Section 3304(a)(6)(A)(ii) "shall apply to weeks of unemployment beginning after the date of enactment of this Act." It also provides that amended Section 3304(a)(6)(A)(ii) "insofar as it requires retroactive payments of compensation to employees of educational institutions other than institutions of higher education (as defined in section 3304(f) of the Internal Revenue Code of 1954) shall not be a requirement for any State law before January 1, 1984."

The Act was approved September 3, 1982. Accordingly, a State whose law includes the nonprofessional denial provisions prior to that date, must either repeal the provision or amend it so as to be consistent with amended Section 3304(a)(6)(A)(i) for weeks of unemployment beginning after September 3, 1982. If the State law is amended, benefits must be denied for any week during a between term period which begins or ends after September 3, 1982, but no retroactive payment may be made for any week which begins before the first week beginning after September 3, 1982.

The January 1, 1984 effective date relates to retroactive payments to nonprofessionals in elementary and secondary schools--not nonprofessionals in higher educational institutions. The payment of retroactive benefits to nonprofessionals in elementary and secondary schools is optional with the State for the period September 3, 1982, the date of enactment, to December 31, 1983. A State adopting the nonprofessional denial or a State law now including the denial and wishing to retain it, may or may not provide for retroactive payments for nonprofessionals in elementary and secondary schools for weeks beginning after September 3, 1982 and ending on or before December 31, 1983. However, retroactive payments for such individuals must be provided for with respect to weeks beginning on or after January 1, 1984.

Since the January 1, 1984 effective date relates only to nonprofessionals in elementary and secondary schools, retroactive payments to nonprofessionals in institutions of higher education are not affected. Retroactive payments to nonprofessionals who were not offered an opportunity to perform the services involved in the

reasonable assurance given by an institution of higher education must be payable for weeks of unemployment beginning after September 3, 1982, the date of enactment. There is no optional period comparable to that with respect to nonprofessionals in elementary and secondary schools.

4. Section 269--Exemption of Licensed Real Estate Agents and Direct Sellers from FUTA Coverage

Section 269 of P.L. 97-248 added a new Section 3508 to Chapter 25 of the Internal Revenue Code of 1954. Chapter 25 contains general provisions relating to employment taxes, including the Federal unemployment tax under Chapter 23 of the Code. Section 3508 provides, effective with respect to services performed after December 31, 1982, that an individual performing services as a qualified real estate agent or as a direct seller shall not be treated as an employee, and the person for whom such services are performed shall not be treated as an employer.

A. "Safe Harbor" Test for Independent Contractor

For several years prior to the amendment described above, there were many bills under consideration by Congress to change the criteria for determining whether an individual who performed service for another was an "employee" or an "independent contractor." The criteria would have provided a "safe harbor" of exempt categories of services and occupations. None of those bills was enacted. The statutory exemptions for licensed real estate agents and direct sellers provide limited "safe harbor" exemptions by occupation. The criteria for determining whether an individual is an employee with respect to other services and occupations under the Federal law, and parallel provisions of the State law, are not changed. Sales persons who are qualified (licensed) real estate agents and direct sellers are treated as self-employed individuals when substantially all of the remuneration paid for their work as real estate agents or direct sellers is directly related to sales or associated output and when their work is performed under a written contract providing that they will not be treated as employees for Federal tax purposes. Individuals engaged in both categories of occupations (real estate agents and direct sellers) sell products, not services, directly to consumers themselves or to other individuals who, in turn, sell products directly to consumers. The seller may, thus, be an individual who both buys for resale and sells for resale. The resale may be through consignment or purchase by payment

of a deposit, with the purchase completed and the purchase price due from the direct seller when the ultimate sale to the consumer occurs. There may be other types of contingent purchase or authorized use for resale.

Individuals in the categories of exempt occupations may also be individuals who organize, promote, and supervise the direct sales activities of other individuals. Their relationship to the sale of products ultimately to consumers must be clearly supportive of and contributory to that result.

B. Qualified Real Estate Agent

For purposes of exemption under Section 3508, the term "qualified real estate agent" means an individual who is a sales person if:

1. such individual is a licensed real estate agent; and

2. substantially all of the remuneration for the services performed as a real estate agent (whether or not paid in cash) is directly related to sales or other output (including the performance of services), rather than the number of hours worked, and

3. the services performed by the individual are performed pursuant to a written contract between such individual and the person for whom the services are performed and such contract provides that the individual will not be treated as an employee with respect to such services for Federal tax purposes.

C. Direct Sellers

For purposes of exemption under Section 3508, the term "direct seller" means any individual if:

1. such individual is engaged in the trade or business of selling (or soliciting the sale of) consumer products to any buyer on a--

   (a) buy-sell basis, or

   (b) deposit-commission basis, or

(c) any similar basis which the Secretary of the Treasury prescribes by regulations, for resale (by the buyer or any other individual), in the home or otherwise than in a permanent retail establishment; or

2. such individual is engaged in the trade or business of selling (or soliciting the sale of) consumer products to a consumer in the home or otherwise than in a permanent retail establishment, and

3. substantially all of the remuneration for the services performed as a direct seller (whether or not paid in cash) is directly related to sales or output (including the performance of services) rather than to the number of hours worked, and

4. the services performed by the individual are performed pursuant to a written contract between such individual and the person for whom the services are performed and such contract provides that the individual will not be treated as an employee with respect to such services for Federal tax purposes.

D. Draft Language

The exemptions provided by Section 3508 are not mandatory. State laws may continue to cover services performed by sales persons as real estate agents and direct sellers, as defined above.

If a State wishes to exempt from coverage licensed real estate agents and direct sellers, it may adapt the language used in sections B and C above, as part of the State law's definition of "employee." There should also be a reference to such an exemption in the general definition of "employment," for example, "except as provided in (reference to the exemption provision)."

5. Section 271--Increase in Federal Unemployment Tax Wage Base, Tax Rate and Amount of Tax Credit, and Amendments to Various Provisions Affected By Such Changes

A. Subsections (a) and (b)(1)-Increase in Taxable Wage Base and Rate

Under the current provisions of the Federal Unemployment Tax Act (FUTA), a payroll tax of 3.4 percent is imposed on the first $6000 of wages paid in a taxable year by employers. Effective January 1, 1983, the Federal unemployment tax rate will be increased from 3.4 to 3.5 percent, and the taxable wage base will increase from $6000 to $7000. The increase in the tax rate means that employers, after receiving the 2.7 percent credit against the 3.5 percent Federal tax, will pay a net Federal tax of 0.8 percent.

B. Subsection (b)(2)-Technical Amendments Made to Various Provisions to Reflect Change in Tax Rate

a) Subparagraph (A) of Section 271(b)(2) amended Section 901(c)(3) of the Social Security Act which contains the authorization for use of granted funds for administration of the program, by changing the net Federal tax rate of 0.7 to 0.8 percent after 1982. This makes the reference to the net Federal tax rate in subparagraph (C)(ii) accord with the increase that resulted in the gross tax rate to 3.5 percent. It takes effect for remuneration paid after December 31, 1982.

b) Subparagraph (B) of Section 271(b)(2) amended the last sentence of Section 905(b)(1) of the Social Security Act to modify the allocation made of appropriations to the Federal Unemployment Trust Fund. Currently sixty-five percent of the revenue raised is allocated to the Employment Security Administration Account (ESAA) and 35 percent is allocated to the Extended Unemployment Compensation Account (EUCA). Effective on January 1, 1983, sixty percent of the revenue raised by the 0.8 tax

rate (or 0.48 percentage points) will be allocated to the Administration Account (ESSA) and 40 percent (or 0.32 percentage points) will be allocated to the Extended Unemployment Compensation Account (EUCA). As under existing law, upon repayment of the Federal general revenue advances to EUCA, the 0.2 percent temporary tax will be eliminated, which in turn will reduce the net FUTA tax to 0.6 percent. At this point, the allocation to the Extended Unemployment Compensation Account (EUCA) will be reduced to 10 percent of the revenue raised by the 0.6 tax rate and 90 percent will be allocated to the Administration Account (ESSA).

c) Subparagraph (C) of Section 271(b)(2) amended Section 6157(b) of the Internal Revenue Code of 1954 to change the reference to the net Federal tax of 0.7 percent contained therein to 0.8 percent. The change to Section 6157(b) (which provides the method for computation of the Federal unemployment tax on a quarterly or other time period basis) was made to accord with the increase in the net Federal tax to 0.8 percent. It takes effect for remuneration paid after December 31, 1982.

C. Subsection (c) of Section 271-Increase in Federal Unemployment Tax Rate for 1985 and Thereafter

Subsection (c)(1) of Section 271 of P.L. 97-248 amends Section 3301 of the Federal Unemployment Tax Act (FUTA) by providing for an increase in the gross Federal unemployment tax on wages paid in 1985 and thereafter from 3.5 to 6.2 percent. This is accompanied by an amendment provided in subsection (c)(2) of P.L. 97-248 that changes the additional credit allowed to employers under Section 3302(b) FUTA, from 2.7 percent to 5.4 percent when they are assigned reduced rates under an approved experience rating plan. The 6.2 percent gross tax includes a temporary 0.2 percent tax that remains in effect until all outstanding general revenue loans to the Federal-State Extended Unemployment Compensation Account (EUCA) have been repaid. Each of these changes takes effect with respect to wages paid after December 31, 1984.

The increase in the additional credit allowed to employers with reduced rates under Section 3302(b) FUTA will

have a significant impact on State experience rating systems since the Federal experience rating requirements contained in Section 3303(a)(1) FUTA will be applicable after 1984 to rates below 5.4 percent. For purposes of clarifying this change, the following explanation describes the applicable Federal experience rating requirements and the manner in which they will impact on the State experience rating systems.

Under the current provisions of Section 3301 of the Federal Unemployment Tax Act (FUTA) a tax equal to 3.4 percent (3.5 percent for 1983) is imposed on the first $6000 ($7000 in 1983) of wages paid by employers (as defined in the Federal statute). Pursuant to Section 3302(a), FUTA, all covered employers in a State are allowed to offset taxes actually paid to an approved State unemployment fund up to 2.7 percent, provided the State unemployment compensation law has been approved by the Secretary of Labor under Section 3304(a), FUTA. Section 3302(b) FUTA, however, provides for an additional credit in the case of employers given a reduced rate under the State's experience rating provisions approved under Section 3303, FUTA. The additional credit is for the difference between the tax (contributions) on employers actually paid under the State law and the tax that would have been paid had the rate been 2.7 percent. The conditions under which the Secretary of Labor allows additional credit for reduced rates of contributions permitted under a State unemployment compensation law are set forth in Section 3303(a)(1), FUTA.

Specifically, Section 3303(a)(1), FUTA, provides in part that,

> "A taxpayer shall be allowed an additional credit under Section 3302(b) with respect to any reduced rate of contributions permitted by a State law, only if the Secretary of Labor finds that under such law."

The above quoted words are interpreted as limiting the additional credit allowance under Section 3302(b) to a "reduced rate" of contributions. The term "reduced rate" is defined in Section 3303(c)(8) to mean:

> "a rate of contributions lower than the standard rate applicable under the State law,

and the term 'standard rate' means the rate on the basis of which variations therefrom are computed."

Since the additional credit allowed under Section 3302(b) may not exceed 2.7 percent, the standard rate applicable under many State laws has not exceeded that percentage. Consequently, any rate that is lower than the "standard rate" constitutes a reduced rate and additional credit will be allowed only if the conditions under which the State grants it are consistent with the Federal experience rating requirements in Section 3303(a)(1), FUTA. Since these requirements are only applicable to a "reduced rate" as so defined, any rates at or above the standard rate provided under a State law are not subject to the requirements in Section 3303(a)(1).

The fact that some State experience rating systems now allow flat rates or other rates above the standard rate that are determined in a manner that is not consistent with Section 3303(a)(1), means that such States must amend their laws before 1985 to assure that any such rates either equal or exceed 5.4 percent and that rates below that percentage are determined on a basis that is consistent with Section 3303(a)(1). The failure of a State to so amend its law would raise issues of conformity under Section 3303(a)(1), FUTA, and thereby jeopardize the additional credit allowance that would otherwise be available to employers in the State.

Transitional Rule Allowing Certain Employers with Flat Rates to Reach 5.4 Percent on a Gradual Basis--Subsection (b)(sic (d)) of Section 271

In some States there are certain specified industries that are currently allowed non-experience based State tax rates or flat rates above a State's standard rate, but are below 5.4 percent, that would be inconsistent with the Federal experience rating requirements after 1984 except for a new provision in P.L. 97-248. Provision has been included in the amendments which allows a State, if it chooses, to provide for such industries to reach the new 5.4 standard tax rates in graduated steps over five taxable years.

Specifically, Section 271(d)(3)(A) of P.L. 97-248 provides that,

(A) In general.

"Notwithstanding Section 3303 of the Internal Revenue Code of 1954, in the case of taxable years beginning after December 31, 1984, and before January 1, 1989, a taxpayer shall be allowed the additional credit under Section 3303(b) of such Code with respect to any employee covered by a qualified specific industry provision if the requirements of subparagraph (B) are met with respect to such employee."

Thus for the four (4) taxable year period from 1985 through 1988 a State's employers will not lose any additional credit allowance because of rates lower than 5.4 percent given to employers in the specified industries. This is true, however, only if the following requirements set forth in subparagraph (B) are met with regard to the contributions paid by such employers with respect to each of the applicable taxable years:

(B) Requirements.

"The requirements of this subparagraph are met for any taxable year with respect to any employee covered by a specific industry provision if the amount of contributions required to be paid for the taxable year to the unemployment fund of the State with respect to such employee are not less than the product of the required rate multiplied by the wages paid by the employer during the taxable year."

The term "required rate" as used in the above formula is defined in subparagraph (C) as being the sum of 1) "the rate at which contributions were required to be made" under the State law "as in effect on August 10, 1982," and 2) "the applicable percentage of the excess of 5.4 percent" over the rate described in 1) above. The "applicable percentage" referred to in subparagraph (C) is defined in subparagraph (D) to mean:

1) 20 percent in the case of taxable year 1985,

2) 40 percent in the case of taxable year 1986,

3) 60 percent in the case of taxable year 1987, and

4) 80 percent in the case of taxable year 1988.

This means that in order to assure allowance of the additional credit under section 3302(b), FUTA, for each of the specified taxable years, the State law must increase the contribution rate that is below 5.4 percent no less than 20 percent each year so that by the year 1989 it will have reached a rate of 5.4 percent. For example, if the required contribution rate is 3.0, it must be increased to no less than 3.48 percent in 1985, 3.96 percent in 1986, 4.44 percent in 1987, 4.92 percent in 1988, and 5.4 percent in 1989. Since the required increases must be made in each of the applicable taxable years at the specified rates as a minimum, and as a condition for the additional credit allowances, the failure to amend the State law to provide for such increases in any of the specified taxable years would subject the State to a possible loss of the additional credit allowances for all employers entitled to reduced rates under the State law.

Employers Covered by a Qualified Specific Industry Provision

As stated earlier, the transitional rule only applies to employers covered by a "qualified specific industry provision." Such a provision is defined in subparagraph (E) as meaning "a provision contained in a State unemployment compensation law (as in effect on August 10, 1982) -

(i) which applies to employees in a specific industry or to an otherwise defined type of employees, and

(ii) under which employers may elect to make contributions at a specified rate (without experience rating) which exceeds 2.7 percent."

Accordingly, the provision allowing employers to pay contributions on a non-experience based tax rate must 1) be in effect under the State law on August 10, 1982, 2) apply to a specific industry or to wages paid a defined type of employees 3) must be provided to employers

on an elective basis without experience rating and 4) the elected rate must exceed 2.7 percent. The provision must meet each of these conditions. If the State law non-experience rated provision becomes effective after August 10, 1982; provides for such a rate on a mandatory basis, or has no application to any specific industry, or to wages paid to a defined type of employees, or is 2.7 percent or less it would not constitute a "qualified" specific industry provision for purposes of the transitional rule.

The full implications of the change made to the gross Federal tax, the additional credit allowances and the transitional rule applicable to the latter which will become effective with respect to wages paid in 1985 and thereafter are still being studied. States will be provided with further explanation on such implications at a later date.

D. Technical Amendments to Various Provisions to Implement Changes in Gross Federal Tax and Additional Credit Allowance in 1985

a) Section 271(c)(2)(B)--Rate of Tax Applicable Under Section 3302(d), FUTA

Subparagraph (B) of Section 271(c)(2) amended the Federal tax rate that is deemed to be applicable under Section 3302(d)(1) when imposing the tax credit reduction that is required to be made under Section 3302(c)(2), FUTA, because the State has an outstanding balance of unpaid advances. That tax is now deemed to be 3.0 percent for purposes of calculating the tax credit reduction that will be applied in any given year. The 3.0 percent rate provided under this provision is changed by subparagraph (B) to 6.0 percent, effective with respect to wages paid after December 31, 1984.

b) Section 271(c)(3)(C)--Computation of Tax

Subparagraph (C) of Section 271(c)(3) amended Section 6157(b) of the Internal Revenue Code of 1954 to change the reference to the net Federal Tax of 0.5

percent contained therein to 0.6 percent which is the net tax that will be applicable when the gross Federal tax does not include the temporary tax of 0.2 percent. The change to Section 6157(b) (which provides the method for computation of the Federal unemployment tax on a quarterly or other time period basis) was made to accord with the increase in the net Federal tax that will occur in 1985. The change is effective for remuneration paid after December 31, 1984.

c) Section 271(c)(3)(D)--Limitation on Administrative Expenditures as Set Forth in Section 901(c)(3) of the Social Security Act

Section 901(c)(3) of the Social Security Act specifies the limitations on the amount of funds that may be made available for expenditure out of the Employment Security Administration Account for administration. The limitation is based on estimates of the net receipts from the Federal Unemployment Tax Act. The references contained in Section 901(c)(3)(C) to the net Federal tax and the gross Federal tax are amended respectively by subparagraph (D) to reflect the change from 0.5 percent to 0.6 percent and from 3.2 to 6.0 percent and from 3.5 percent to 6.2 percent as appropriate to reflect the changes in such taxes that will occur in 1985. These changes are effective with respect to remuneration paid after December 31, 1984.

E. Section 271(c)(3)(A)--Amendments Changing Tax Credits Reductions Applicable to Unpaid Advances

Under the provisions of Section 3302(c), FUTA if a State does not fully repay all loans within two or three years (depending on when the loan is received), employers in the State become subject to an annual reduction in the offset credit against the gross Federal unemployment tax rate. The reduction is now equal to 10 percent of the tax (deemed 3.0 percent for this purpose) imposed by Section 3303 or 0.3 percent. Subparagraph (A) of

Section 271(c)(3) of P.L. 97-248 changes that percentage by decreasing it to 5 percent in 1985. Since the gross Federal unemployment tax will be deemed to be 6.0 percent at that time, the reduction will continue to be 0.3 percent. This change will be effective with respect to remuneration paid after December 31, 1984.

F. Section 271(c)(3)(B)--Amendment Changing Percentage of Tax Credit Reduction Applicable When State Does Not Fulfill Commitments Under the Trade Act of 1974

Under the current provisions of Section 3302(c)(3), FUTA, a State that has not entered into an agreement with the Secretary of Labor to administer the provisions of the Trade Act of 1974 or has not fulfilled its commitments under that agreement will, if the Secretary of Labor makes a determination to that effect, subject employers in the State to a reduction in the offset credit that is allowable under Section 3302, FUTA. The reduction is currently 15 percent of the tax imposed with respect to wages paid by such employers. Subparagraph (B) provides for a decrease in that percentage to 7 1/2 percent effective with respect to remuneration paid after December 31, 1984. Since the gross Federal tax will be increased to 6.0 percent at that time this decrease in the tax reduction will not result in any change in the amount of the tax credit reduction.

6. Section 272--Qualification for Tax Credit Reduction Elimination by Certain Repayments of Outstanding Advances

Section 2406 of P.L. 97-35 added subsection (f) to Section 3302, FUTA, which limits the amount of tax credit reductions under subsection (c) with respect to taxable years 1981 through 1987 by placing a cap on such tax credit reductions when specified conditions are satisfied. Those conditions are described in UIPL 13-82, dated March 22, 1982.

A. Further Limitations on Tax Credit Reductions

Section 272 of P.L. 97-248, added a new subsection (g) to Section 3302, FUTA, which provides conditions for avoiding a tax credit reduction under subsection (c)(2) with respect to any taxable year beginning after December 31, 1982. Its provisions, in contrast to those contained in subsection (f), are operative beyond taxable

year 1987 and have no terminal date.

Subsection (c)(2) of Section 3302 provides that if an advance or advances have been made to the unemployment account of a State under Title XII of the Social Security Act, the total credits otherwise allowable to employers of the State are reduced in the case of a taxable year beginning with the second consecutive January 1, as of which there is a balance of such advances which are not fully repaid by November 10 of that taxable year. The amounts of tax credit reduction, resulting in an equal increase in the Federal unemployment tax rate, are specified in subsection (c)(2), subject to the cap limitation set forth in subsection (f).

B. Qualifications for Elimination of Federal Tax Increases

New subsection (g) provides that no reduction in tax credits under subsection (c)(2) shall apply to a taxable year if the State makes repayment or repayments of advances received by its unemployment account, under Title XII of the Social Security Act, satisfying the following requirements:

1. The repayments from any source, including the State unemployment fund, during the one-year period ending on November 9 of the taxable year to which the reductions of tax credits would otherwise apply, including satisfaction of the requirements of subsection (f), are not less than the sum of--

   (a) the aggregate of the potential additional taxes that would be payable by the State's employers if subsection (c)(2) were applied for such taxable year, and

   (b) any advances made to such State during such one-year period under Title XII of the Social Security Act;

2. There will be a balance of assets in the State unemployment fund sufficient to pay all benefits due and payable under all programs during the three-month period beginning on November 1 of such taxable year without receiving any advance under Title XII; and

3. (a) there is a net increase in the solvency of the State unemployment compensation system for the taxable year which increase is attributable to changes made in the State law after the date of the first advance which would result in a reduction of tax credits in the applicable taxable year, or, if later, after September 3, 1982, i.e., the date of enactment of subsection (g), and

   (b) such net increase is equal to or larger than the potential additional taxes described in paragraph 1.(a) above; and

4. Any additional tax paid by employers of the State by reason of reduction of tax credits under Section 3302(c) FUTA will not be treated as a repayment for this purpose.

When the requirements of subsection (f) for a cap on tax credit reductions are satisfied with respect to a taxable year, the January 1 of such taxable year is not counted for advancing the repayment schedule set forth in subsection (c)(2). In contrast, despite satisfaction of the requirements of subsection (g) for eliminating any tax credit reduction with respect to a taxable year, the January 1 of such taxable year will be counted for adancing the repayment schedule.

C. Net Increase In Solvency

The net increase in the solvency of the State unemployment compensation system sufficient to qualify for elimination of any tax credit reduction under subsection (g) must be a result of a change in the State law and result in a savings in an amount at least equal to the aggregate of the potential additional taxes (total of the potential tax credit reductions) that employers subject to the Federal unemployment tax would be liable to pay by reason of the application of tax credit reductions but for the application of subsection (g). A net increase in solvency for this purpose may be comprised of additional contribution revenue and/or reduced benefit expenditures.

Changes made in the State law after January 1, 1983, should probably include changes over and above the increase in taxable wage base from $6000 to $7000, effective on January 1, 1983, and over and above simply the establishment of a standard rate or the "highest rate"

within the meaning of Section 3302(b), FUTA, of 5.4 percent effective on January 1, 1985, unless it can be established that such changes result in a net increase in the solvency of the State's unemployment compensation system that equals or exceeds the potential additional taxes that would be assessed by reason of the tax credit reduction.

D. Application for Avoidance of Tax Increase

A State may apply for avoiding a tax credit reduction under the authority of subsection (g) by a letter from the Governor of the State to the Secretary of Labor requesting such an avoidance. The letter should be mailed no later than July 1 of the year for which the request is made. The request shall include a statement of the amount paid (and to be paid before November 10 of that year) by the State to the Federal unemployment account, a description of State law statutory changes made since the applicable date described in paragraph B3(a) above and an Anticipated Impact Statement (AIS) as described on page 9 of UIPL 13-82 with respect to application for a cap on tax credit reductions under subsection (f). The Secretary will determine the proper amount of tax credit reductions, if any, taking into account both subsections (f) and (g), and also a further limitation described in Section 273 of P.L. 97-248 (see Section 7 below), if applicable, and will notify the Governor and the Secretary of the Treasury. A summary of his findings will be published in the Federal Register.

To qualify for avoidance of a tax credit reduction under subsection (g), it is not necessary for a State also to qualify for a cap on tax credit reductions under subsection (f). The criteria for each are different and independent of the other. If subsection (g) applies, there would be no tax credit reduction to which subsection (f) could apply other than to limit (by reducing) the repayment amount required to satisfy the requirements of subsection (g).

7. Section 273--Limitation of Fifth Year Added Tax Credit Reduction

Section 273 of P.L. 97-248 amended paragraph (2) of Section 3302(c) by adding a new sentence at its end, effective with respect to any taxable year beginning

after December 31, 1982. Currently, subparagraph (C) of such paragraph (2) provides that in the case of any taxable year beginning with the fifth or any succeeding consecutive January 1 as of the beginning of which there is a balance of advances under Title XII of the Social Security Act, the tax credits shall be reduced, in addition to the incremental 0.3 percent reduction, by an increased amount determined by a specified formula.

1. Conditions of Fifth Year Limitation

Amended paragraph (2) provides that the provisions of subparagraph (C) shall not apply, but the provisions of subparagraph (B) shall apply, if the Secretary of Labor determines on or before November 10 of a taxable year that the State satisfied the conditions of subsection (f)(2)(B). Those conditions are described as Criterion b.(2) on page 5 of UIPL 13-82. The information required in substantiation of Criterion b.(2) is set forth on pages 8 to 10 of UIPL 13-82.

2. Application for Fifth Year Limitation

There is no need for a State to apply for the waiver of the added tax credit reduction pursuant to subparagraph (C) of paragraph (2) if it is applying for a cap on tax credit reductions under subsection (f) or for elimination of any reduction under subsection (g) with respect to the same taxable year. Otherwise, the Governor should submit a request to the Secretary of Labor containing information to support satisfaction of Criterion b.(2) mentioned above, as described in UIPL 13-82.

3. Added Tax Increase Applicable When Fifth Year Limitation Does Not Apply

If the added reduction of tax credits pursuant to subparagraph (C) does not apply with respect to any taxable year because the State has satisfied the conditions in subsection (f)(2)(B) of Section 3302 then the added tax credit reductions applicable to a balance of outstanding advances in subparagraph (B) of Section 3302(c)(2) will apply.

8. Section 274--Qualification for Deferral of Interest Payable on Advances

Section 2407 of P.L. 97-35 amended Section 1202 of the Social Security Act and added subsection (b) which provides for assessment of interest on advances made to the unemployment account of a State on and after April 1, 1982. The conditions under which interest is payable and the various due dates for payment are described on pages 11 to 14 of UIPL 13-82, dated March 22, 1982.

A. Payment of Interest by Installments

Section 274 of P.L. 97-248 added a new sentence at the end of paragraph (3) of Section 1202(b) effective with respect to interest required to be paid after December 31, 1982, permitting its payment by installments under certain conditions.

1. Requirements.

If a State's rate of insured unemployment, as determined for the purposes of beginning and ending extended benefit periods, for the period consisting of the first six months of the preceding calendar year equalled or exceeded 7.5 percent, the State shall be allowed to pay the interest due as follows:

(a) 25 percent of the amount otherwise payable during such calendar year on or before the regular due date, and

(b) 25 percent more on or before the corresponding due date in each of three succeeding calendar years.

2. Interest on Interest

Interest amounts the payment of which is deferred as provided above shall be subject to interest in the same manner and as if the deferred amounts were an advance made on the day that the entire

amount of interest would have been payable under paragraph (3) of Section 1202(b) but for the deferral described herein.

B. Applicability of Other Provisions on Interest

The other provisions of Section 1202(b) with respect to assessment and payment of interest on advances are not affected by the amendment of such Section 1202(b)(3) permitting the payment of interest by installments. SESAs should continue to observe the requirements in those respects as described in UIPL 13-82.

9. Section 275--Required Repayments from Extended Unemployment Compensation Account

Section 275 of P.L. 97-248 amended Section 905(d) of the Social Security Act by establishing as a condition for repaying advances from the Extended Unemployment Compensation Account to the general fund of the Treasury that a determination by the Secretary of Treasury in consultation with the Secretary of Labor be made as to the fund adequacy of the account.

As amended, Section 275 added the following sentence to Section 905(d):

> "Repayments under the preceding sentence shall be made whenever the Secretary of Treasury (after consultation with the Secretary of Labor) determines that the amount then in the account exceeds the amount necessary to meet the anticipated payments from the account during the next 3 months."

The new sentence added to subsection (d) of Section 905 specifies that repayments must be made to the general fund of the Treasury whenever the amount of funds in the Extended Unemployment Compensation Account exceeds the amount necessary to meet anticipated payments from the account for the next 3 months. The amendment to Section 905 of the Social Security Act has no effect upon and will not require a change in State law.

Effective Date

The amendment made by Section 275 of P.L. 97-248 became effective upon enactment, September 3, 1982.

10. Section 276(a)--Exclusion from FUTA Coverage for Students Enrolled in Work-Study Programs

Subparagraph (C) of Section 3306(c)(10) of the Federal Unemployment Tax Act (FUTA) permits the exclusion from FUTA coverage for:

> "(C) service performed by an individual under the age of 22 who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established, or" (Underlining added)

Section 276(a)(1) of P.L. 97-248 amended subparagraph (C) of Section 3306(c)(10) of FUTA, by striking out the underlined words "under the age of 22." Amended Section 3306 (c)(10)(C) now permits the exclusion from coverage under FUTA of services performed by students, regardless of age, in full time work that is an integral part of the student's academic program.

This exclusion applies to service of students enrolled in all public and nonprofit educational institutions which provide work-study programs, whether they are at, or below, college level. The exclusion does not apply to employee educational or training programs run by or for an employer or a group of employers. The States are not required to exclude the services of students in work-study programs. However, they may do so.

Effective Date

Section 276(a)(2) of P.L. 97-248 provides that the amendment made by paragraph (1) of Section 276(a) shall apply with respect to services performed after the date of enactment, September 3, 1982. Accordingly, this change in State law may be made effective anytime after September 3, 1982.

11. Section 276(b)--Exclusion from FUTA Coverage for 1983 Only of Students Employed in Organized Camps

Section 276(b) of P.L. 97-248 adds new subparagraph (20) to Section 3306(c) FUTA to read as follows:

> "(20) service performed by a full time student (as defined in subsection (q)) in the employ of an organized camp-
>
> "(A) if such camp--
>
> "(i) did not operate for more than 7 months in the calendar year and did not operate for more than 7 months in the preceding calendar year, or
>
> "(ii) had average gross receipts for any 6 months in the preceding calendar year which were not more than 33 1/3 percent of its average gross receipts for the other 6 months in the preceding calendar year; and
>
> "(B) if such full time student performed services in the employ of such camp for less than 13 calendar weeks in such calendar year."

This amendment is effective with respect to remuneration paid during calendar year 1983 only. It will have no application beyond this one-year period. We recommend that States electing to include this exemption under the State law do so in accordance with the language contained in the Federal law since it will impact on the coverage provided for nonprofit organizations and governmental entities in Section 3304(a)(6)(A) and 3309, FUTA. The only exclusions permissible from the required coverage of nonprofit organizations and governmental entities are those excluded from the definition of employment in Section 3306(c) and 3309(b). If the State law "organized camp" exclusion results in a wider exclusion of services than that provided for by Section 3306(c)(20) and 3306(q), a potential Federal issue could be presented.

Under new Section 3306(c)(20) the service of a full time student (see definition below) who was paid wages for less than 13 calendar weeks in calendar year 1983 in the employ

of an organized camp (i.e. summer camp) is excluded from FUTA Coverage.

This exclusion will apply to only those full time students who work "less than 13 calendar weeks" in 1983 and are in the employ of an "organized camp." Both conditions must be met in order that such services qualify for the FUTA coverage exclusion. Therefore, a full time student who worked in the employ of an organized camp for 12 calendar weeks and any additional day(s) beyond that 12 calendar week (i.e. 1 day) into the 13th calendar week would not be excluded from FUTA coverage under this amendment.

Organized Camp Defined

As indicated above, an organized camp is one that:

1. will not operate for more than 7 months in calendar year 1983 and did not operate for more than 7 months in calendar year 1982, or

2. had average gross receipts for any 6 months (whether or not consecutive) in calendar year 1982 which were not more than 33 1/3 percent of its average gross receipts for the other 6 months in calendar year 1982.

Accordingly, if an organized camp did not operate at all in calendar year 1982 and will operate for less than 8 months in 1983, it would meet the criteria. On the other hand, if an organized camp operated for more than 7 months in calendar year 1982, and failed, therefore, to meet in the first instance the criteria established to qualify as an "organized camp," but, in addition, had average gross receipts for 6 months in calendar year 1982 which were not more than 33 1/3 percent of its average gross for the other 6 months in calendar year 1982, it would, then, for the purpose of this provision, meet the definition of "organized camp."

Full Time Student Defined

Section 276(b)(2) of P.L. 97-248 amends Section 3306 by adding new subsection (q) which reads as follows:

"(q) Full Time Student. - For purposes of subsection (c)(20), an individual shall be treated

as a full time student for any period-

"(1) during which the individual is enrolled as a full time student at an educational institution, or

"(2) which is between academic years or terms if-

"(A) the individual was enrolled as a full time student at an education institution for the immediately preceding academic year or term, and

"(B) there is a reasonable assurance that the individual will be so enrolled for the immediately succeeding academic year or term after the period described in subparagraph (A)."

Under this provision, an individual is considered to be a full time student for any period during which the individual is enrolled as a student at an educational institution. An individual is also considered to be a full time student between academic years or terms (i.e., summer recess) if the individual was enrolled as a full time student at an educational institution for the immediately preceding year or term, and there is a reasonable assurance that the individual will return to an educational institution at the beginning of the next academic year or term as a full time student.

Since the Internal Revenue Service has the primary authority for administration of this provision, it will have the responsibility for interpreting and applying the language in this provision.

Effective Date

Section 276(b)(3) of P.L. 97-248 provides that this change in Section 3306(c) by adding new subsection (20) shall apply to remuneration paid after December 31, 1982, and before January 1, 1984. Therefore, this amendment is effective during calendar year 1983 and will have no application beyond this one-year period.

Although this is not a Federal law requirement for conformity, States that want to amend their laws to coincide with this change in FUTA, should seek an appropriate amendment at any legislative session scheduled this year or next year in view of the effective date of the amendment and the limited application it has for calendar year 1983.

12. Section 277--Extension of the FUTA Exemption of Certain Alien Farmworkers

Section 277 of P.L. 97-248 amends Section 3306(c)(1)(B) of the Federal Unemployment Tax Act (FUTA) by extending for two years, until January 1, 1984, the FUTA exemption from coverage of farmworkers who are aliens temporarily admitted to the United States to work in agricultural employment.

Prior to the amendments made by P.L. 96-84, effective January 1, 1980, service performed by an alien referred to in Section 3306(c)(1)(B), FUTA, was not required to be covered and was not required to be taken into account in determining whether the size of firm provisions of Section 3306(c)(1)(A)(i) and (ii) were met. P.L. 96-84 extended the exemption from coverage of alien agricultural labor until January 1, 1982, but required consideration of such service in determining size of firm beginning January 1, 1980.

Section 277 of P.L. 97-248 further extends the exemption from coverage of alien agricultural labor until January 1, 1984. However, service by aliens in agricultural labor must be included in the determination of size of firm for coverage.

Agricultural employers will not be subject to the Federal unemployment tax for cash wages paid for agricultural labor performed by aliens until January 1, 1984. States that do not provide a similar exclusion in their own laws for alien agricultural labor will subject employers to State unemployment taxes under the same conditions as taxable labor performed by other individuals.

Effective Date

The amendments made by Section 277 of P.L. 97-248 became effective upon enactment, September 3, 1982. This change in State law may be made effective anytime after September 3, 1982 and has retroactive effect to January 1, 1982.

Draft Language to Amend State Laws As Necessary to Implement Changes Made in the Federal Law By P.L. 97-248

Several of the changes made to the Federal law by P.L. 97-248 will not require changes to State laws per se. The following draft language is recommended to the State to implement those provisions that will require amendments to the State laws. The language is set forth under the section numbers used in P.L. 97-248.

1. Section 191--Rounding of Unemployment Benefit Amounts to the Next Lowest Dollar

   This amendment to implement the provision of amended Section 204(a)(2)(D) of the Federal-State Extended Unemployment Compensation Act is not a requirement for the receipt of administrative grants or the allowance of tax offset credit. The following draft language is offered for purposes of satisfying the amendment to Section 204(a)(2), EUCA:

   > "Notwithstanding any other provisions of this law to the contrary, any amount of unemployment compensation payable to any individual for any week if not an even dollar amount, shall be rounded to the next lower full dollar amount."

   Although the above draft language should serve as a basis for overriding existing provisions to the contrary, the agency should also seek amendments to specific provisions in the State law which contain language allowing the weekly benefit amount to be rounded up to assure that such provisions provide for rounding down the weekly benefit amount.

2. Section 192--Extension of Time for Use of Reed Act Monies

   Amendments to Section 903(c)(2) of the Social Security Act, enacted by Section 192 of P.L. 97-248, extended the time from 25 to 35 years within which States are authorized to use Reed Act money for

one or more specific administrative purposes pursuant to an appropriation by the State legislature. The appropriation act must satisfy certain conditions set forth in the Federal law. State laws containing provisions authorizing administrative use of Reed Act money pursuant to an appropriation should be amended to reflect the extended period for such use to 35 years from the time that the Reed Act money was originally allocated and credited to the State under Section 903(a) of the Social Security Act. This can be accomplished by changing all references to the current 25 year period in such enabling legislation so that it provides for a 35 year period. Also, the following language may be used, appropriately adapted for the particular purpose, as an appropriation act.

AN ACT APPROPRIATING MONEY FOR ERECTING A BUILDING FOR USE BY (Name of State employment security agency)

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF (Name of State)

SEC. 1 There is hereby appropriated out of funds made available to this State under Section 903 of the Social Security Act, as amended, the sum of $_____, or so much thereof as may be necessary, to be used, under the direction of the (name of State employment security agency or the agency responsible for building construction), for the purpose of acquiring land and erecting a building thereon for the use of the (name of State employment security agency) and for such improvements, facilities, paving, landscaping, and fixed equipment 1/ as may be required for its proper use and for operation by the (name of State employment security agency).

SEC. 2 No part of the money hereby appropriated may be obligated after the expiration of the 2-year period beginning on the date of enactment 2/of this act.

SEC. 3 The amount obligated 3/pursuant to this act during any 12-month period beginning on (the first day of the State fiscal year) and ending on (the last day of the State

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Footnotes appear on page 3.

fiscal year) shall not exceed the amount by which (a) the aggregate of the amounts credited to the account of this State pursuant to Section 903 of the Social Security Act during such 12-month period and the 34 preceding 12-month periods exceeds (b) the aggregate of the amounts obligated for administration and paid out for benefits and charged against the amounts credited to the account of this State during such 35 12-month periods. 4/

SEC. 4 This Act shall take effect and be in force from and after passage.

1/ "Fixed equipment" refers to such things as a central hearing and/or air conditioning plant which becomes an integral part of the building and may be included in the cost of the building reimbursable out of granted funds. Personalty, such as furniture and other furnishings, should be specifically and separately authorized. Although costs of personalty may, of course, be met from Reed Act money, such costs are not reimbursable from granted funds.

2/ The Employment and Training Administration recommends that the phrase "date of enactment" be used here, since Section 903(c)(2)(B) of the Social Security Act requires that use of the appropriated money be limited to a 2-year period beginning with such date.

3/ Section 903(c)(2)(D) requires that this limitation be applied to money obligated, even though a State may choose to apply the 2-year limitation to expenditures.

4/ A State may use "fiscal year" instead of reference to a specified number of 12-month periods.

3. Section 193--Treatment of Nonprofessional Employees Between Terms

The provisions of Section 3304(a)(6)(A)(ii) of the Federal Unemployment Tax Act as amended by P.L. 97-248 will require changes in current State laws that have adopted the optional between-terms provisions contained in that section. Such changes will be necessary for conformity with the new requirements in Section 3304(a)(6)(A)(ii).

The following draft language is intended to be incorporated within the framework of the provisions set out in the section on benefit eligibility based on "nonprofessional" service with educational institutions contained on page 49 in the Draft Legislation and Commentary to Implement the Unemployment Compensation Amendments of 1976-P.L. 94-566, a copy of which has been previously issued to each State.

> "With respect to services performed in any other capacity for an educational institution ~~(other than an institution of higher education as defined in section 2 (u))~~ benefits shall not be paid on the basis of such services to any individual for any week which commences during a period between two successive academic years or terms if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms, except that if compensation is denied to any individual under this subparagraph and such individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of this clause. (new language underlined, deleted language lined out)

We recommend for consistency with this new Federal law provision that the State carefully follow the draft language provided.

4. Section 276(a)--Exclusion from Coverage for Students Enrolled in Work-Study Programs.

The amendment to implement the provision of revised Section 3306(c)(10)(C) of the Federal Unemployment Tax Act may be included under those State law provisions pertaining to exclusion from coverage for students enrolled in work-study programs by amending that Section of its law by striking out the words "under the age of 22." If the State wishes to expand the exclusion from coverage to all students enrolled in work-study programs, this change in State law may be made effective anytime after September 3, 1982.

5. Section 276(b)--Exclusion from FUTA Coverage for 1983 Only of Students Employed in Organized Camps.

The amendments to implement the provisions of new Section 3306(c)(20) of FUTA can be included under those State law provisions pertaining to exclusions. This change in State law may be made effective solely for calendar year 1983. We recommend the following draft language for consistency with new Section 3306(c)(20):

"(a) service performed by a full time student (as defined in subsection (g)) in the employ of an organized camp-

"(1) if such camp-

"(A) did not operate for more than 7 months in the calendar year and did not operate for more than 7 months in the preceding calendar year, or

"(B) had average gross receipts for any 6 months in the preceding calendar year which were not more than 33 1/3 percent of its average receipts for the other 6 months in the preceding year; and

(2) if such full time student performed services in the employ of such camp for less than 13 calendar weeks in such calendar year."

"(A) For purpose of this section an individual shall be treated as a full time student for any period-

(i) during which the individual is enrolled as a full time student at an educational institution, or

(ii) which is between academic years or terms if-

"(B) the individual was enrolled as a full time student at an educational institution for the immediately preceding academic year or term, and

"(C) there is a reasonable assurance that the individual will be so enrolled for the immediately succeeding academic year or term after the period described in subparagraph (A)."

(3) EFFECTIVE DATE.- The amendments made by this subsection shall apply only to remuneration paid after December 31, 1982, and before January 1, 1984."

6. Section 277-Extension of the FUTA Exemption of Certain Alien Farmworkers

The amendment extending for two years, until January 1, 1984, the FUTA exemption from coverage of farmworkers who are aliens temporarily admitted to the United States to work corps can be implemented under State law by eliminating reference to January 1, 1982 in pertinent section of State law and replacing it with January 1, 1984.